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1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 8-16-08178-reg

4 Adv. Case No. 8-16-75545-reg

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6 In the Matter of:

7

8 DOWLING COLLEGE,

9

10 Debtor.

11 - - - - - x

12 ZAIKOWSKI,

13 Plaintiff,

14 v.

15 DOWLING COLLEGE,

16 Defendant.

17 - - - - - x

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B E F O R E:

HON. ROBERT E. GROSSMAN

U.S. BANKRUPTCY JUDGE

Page 3

1 HEARING Re 8-16-08178-reg [4] ADJ Summons and Notice of Pre-  
2 Trial Conference

3

4 HEARING re [425] ADJ Order approving Bidding Procedures for the  
5 Sale of the Debtor's Brookhaven Campus [406] Motion to Sell  
6 Property of the Estate Free and Clear of Liens under 11 U.S.C  
7 363(f) by Debtor Dowling College.

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9 HEARING re [74] ADJ Order Scheduling Initial Case Management  
10 Conference.

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 KLESTADT WINTERS JURELLER SOUTHARD & STEVENS, LLP

4 Attorneys for Dowling College, Debtor

5 200 West 41st Street, 17th Floor

6 New York, NY 10036

7

8 BY: SEAN C. SOUTHARD

9

10 MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

11 Attorney for Members of the Dowling Board of Trustee's

12 990 Stewart Avenue, Suite 300, PO Box 9194

13 Garden City, NY 11530

14

15 BY: HOWARD B. KLEIBERG

16

17 CERTILMAN, BALIN, ADLER & HYMAN

18 Attorneys for ACA Financial Guaranty Corp, Creditor

19 90 Merrick Avenue

20 East Meadow, NY 11554

21

22 BY: RICHARD J. MCCORD

23

24

25

1 UNITED STATES DEPARTMENT OF JUSTICE  
2 Attorney for the U.S. Trustee  
3 Courthouse 560 Federal Plaza  
4 Central Islip, NY 11722

5

6 BY: STAN YANG

7

8 STIM & WARMUTH, PC

9 Attorney for Kimberly Dawn Poppiti, Interested Party  
10 2 Eighth Street  
11 Farmingville, NY 11738

12

13 BY: GLENN P. WARMUTH

14

15 SILVERMAN ACAMPORA, LLP

16 Attorneys for Official Committee of Unsecured  
17 Creditors

18 100 Jericho Quadrangle, Suite 300  
19 Jericho, NY 11753

20

21 BY: RONALD J. FRIEDMAN

22

23

24

25

1 OUTTEN & GOLDEN, LLP

2 Attorneys for Plaintiff, Lori Zaikowski

3 3 Park Avenue

4 29th Floor

5 New York, NY 10016

6

7 BY: RENE S. ROUPINIAN (TELEPHONICALLY)

8

9 WHITE & CASE, LLP

10 Attorneys for ACA Financial Guaranty Corp., Creditor

11 1155 Avenue of the Americas

12 New York, NY 10036

13

14 BY: BRIAN D. PFEIFFER (TELEPHONICALLY)

15

16 MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO

17 Attorney for UMB Bank

18 One Financial Center

19 Boston, MA 02111

20

21 BY: IAN HAMMEL (TELEPHONICALLY)

22

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2 CLERK: -- presiding.

3 THE COURT: Good afternoon.

4 CLERK: Matter number 69, Zaikowski versus Dowling  
5 College. Matter number 70 and 71, Dowling College.

6 MR. SOUTHARD: Good afternoon, Your Honor. Sean  
7 Southard of Klestadt, Winters, Jureller, Southard, and  
8 Stevens on behalf Dowling College.

11 MR. MCCORD: Good afternoon, Your Honor.

12 Certilman, Balin by Richard McCord for ACA Financial Guaranty  
13 Corp.

14 MR. YANG: Good afternoon, Stan Yang, United States  
15 Trustee.

16 MR. WARMUTH: Good afternoon, Your Honor. Glenn  
17 Warmuth, Stim and Warmuth, for Kimberly Dawn Poppiti.

18 MR. FRIEDMAN: Good afternoon, Your Honor. Ronald  
19 Friedman, Silverman Acampora. Counsel to the Committee of  
20 Creditors.

CLERK: Please state your phone appearance.

22 MS. ROUPINIAN: Good afternoon, Your Honor. Rene  
23 Roupinian of Outten and Golden, appearing on behalf of Lori  
24 Zaikowski and the class. the one class.

25 MR. PEEIFFER: Good afternoon, Your Honor. Brian

1 Pfeiffer from White and Case, appearing on behalf of ACA  
2 Financial.

3 MR. HAMMEL: Good afternoon, Your Honor. Ian  
4 Hammel from Mintz Levin on behalf of UMB Bank, as Trustee.

5 THE COURT: Okay.

6 MR. SOUTHARD: Thank you, Your Honor. Once again,  
7 for the record, Sean Southard on behalf of Dowling College.

8 Your Honor, we're here on two matters that were  
9 adjourned from approximately three weeks ago when we were  
10 last before Your Honor. One is the adjourned pre-trial  
11 conference and the Warren Act litigation, commenced by Ms.  
12 Zaikowski. And the other is the adjourned sale approval  
13 hearing in relation to the Debtor's Brookhaven Campus sale.

14 Your Honor, I think we're -- as it relates to the  
15 Zaikowski matter, we're in essentially the same position that  
16 we were in last time we were before you, which is, it's  
17 difficult to make further progress in that case until we have  
18 an outcome that is more determinative of, of overall value in  
19 the estate from the, from the Brookhaven Campus sale.

20 So my proposal for Your Honor on that would be to  
21 simply carry that matter further.

22 THE COURT: Are we doing discovery in that?

23 MR. SOUTHARD: Presently there is no active  
24 discovery.

25 THE COURT: I'm going to set a -- I've got to set a

1 trial date on this one. You, you got to -- you can't keep --  
2 you can't just sit here. There's, there's a lawsuit. I have  
3 no idea when this case is going to be resolved in the  
4 economic sense, so you all have to figure out what you want  
5 to do with this lawsuit. We're not going to just let it sit  
6 here.

7 MR. SOUTHARD: Well, Your Honor, I certainly could  
8 make a suggestion on what should be done with the lawsuit. I  
9 say it only tongue in cheek, but we're not the, the, the  
10 Plaintiff, obviously. The Debtor has provided a great deal  
11 of information to the Plaintiffs on a confidential basis, and  
12 in the context of settlement discussions, so the relative  
13 metrics associated with potential damages and damage claims,  
14 I think, is pretty well-understood.

15 The discovery that would relate to the merits of  
16 the claims and defenses, I think, is less fulsome and  
17 certainly no depositions have been taken. Not that the  
18 Debtor, necessarily would need to.

19 THE COURT: We, we haven't done a pre-trial order  
20 in this, have we?

21 MR. SOUTHARD: Your Honor, there was a scheduling  
22 order initially done, but no --

23 THE COURT: All right.

24 MR. SOUTHARD: -- pre-trial order.

25 THE COURT: I need you to revise that scheduling

1 order, and I need you to work back from the fourth quarter.  
2 I want to get rid of this thing. So if you got any  
3 depositions, take them. If there's any motions that want to  
4 be made, make them. Whatever you guys can agree on. If the  
5 only issue is damages, that's okay, too.

6 But I've got -- I -- we're going to move this  
7 thing. We can't just have it sit here. I guess the  
8 Plaintiff is, is the one that's going to have to move it  
9 because from the Debtor's standpoint, they'd just assume we  
10 dismiss it.

11 MR. SOUTHARD: That's correct.

12 THE COURT: So you, you are going to have to move  
13 this case if you're going to continue it. Okay?

14 MS. ROUPINIAN: Your Honor? I, I'm having a little  
15 difficulty hearing you, but I -- my understanding is that  
16 you're indicating that you want us to file an amended  
17 scheduling order so that we can complete discovery on the,  
18 the merits.

19 We frontloaded this, as the Court may recall, and  
20 did -- and had mediation in the hopes of being able to  
21 resolve the case without the expenditure associated with  
22 formal discovery. And in that way, we did the damage  
23 discovery first, which I think was invaluable to all the  
24 parties so that we could, sort of, get our arms around the  
25 universe of exposure to the estate. And so that is complete.

1           I agree with, with Mr. Southard on that, and we  
2        were holding off on the expenditure of formal discovery on  
3        the merits to see if we may able to reach a resolution. And  
4        then we had this additional wrinkle with respect to the  
5        Brookhaven sale, because I think it was all the parties'  
6        expectation that there would be sufficient funds in the  
7        estate to not only pay priority claims, but also to have  
8        funds trickle down to general and secured creditors.

9           And so that's why on February 5th, I -- my  
10       understanding was that all parties were in agreement that it  
11       made, it made sense to hold off on Warren until we could get  
12       a better sense of how the Brookhaven property would shake  
13       out. But we're, we're happy to prepare an amended scheduling  
14       order and engage in formal discovery so that we're dual  
15       tracking this.

16           And hopefully there'll be money at the end of the  
17       day to pay the employee's claims.

18           THE COURT: Okay. That's what we'll do. Do an  
19       amended scheduling order. Set out your discovery, any  
20       dispositive motions if there are any to be made. And let's  
21       go ahead that way. Because I have no idea what's happening  
22       with the rest of the case.

23           MR. SOUTHARD: Very well, Your Honor.

24           If that concludes the discussion on the pre-trial,  
25       we can talk the rest.

1                   THE COURT: Because there's a carve out in this  
2 case if I remember for unsecureds.

3                   MR. SOUTHARD: Your Honor, there -- it, it's  
4 somewhat complicated, but there are --

5                   THE COURT: Why is it complicated? It wasn't  
6 complicated three weeks ago.

7                   MR. SOUTHARD: No, it's always been exactly this  
8 complicated, which is that there are baseline carve outs, and  
9 then there's a sharing mechanism over certain thresholds of  
10 recovery, so that it's hard to determine now what the  
11 ultimate value --

12                  THE COURT: Yeah. That, that I understand. There,  
13 there were minimums, and those minimums would be affected,  
14 ultimately, by events. Like (indiscernible) could be  
15 reduced, could only be increased. So there are some dollars  
16 that are always going to be available to this estate.

17                  MR. SOUTHARD: Correct.

18                  THE COURT: These guys have either some claim to  
19 those dollars or not. And you have to find that out.  
20 Because if they do, that's certainly relevant to the  
21 remaining creditors, and if they don't, that's also relevant.  
22 So that's why I can't leave this out there where we get to  
23 the end, and then we still don't know the answer about what's  
24 going to be distributed to creditors.

25                  So that's what I'm trying to get to. However you

1 guys get there, if you don't want to litigate, if you can  
2 figure out how to resolve it, that's okay with me, too. But  
3 --

4 MR. SOUTHARD: Understood, Your Honor.

5 THE COURT: Okay. So that's the hors d'oevres in  
6 this dinner. What, if anything, is going to happen here?  
7 Well, something is going to happen, but --

8 MR. SOUTHARD: Yeah. Something is, is going to  
9 happen, Your Honor. So switching gears, then, and talking  
10 about where we are relative to the, to the sale process,  
11 which is sort of the main event.

12 Your Honor, we -- over the last three weeks, we've  
13 been working hard, and talking to everyone, essentially.  
14 That includes the, the three bidders who participated at the  
15 auction during the, the auction process to some new  
16 interested parties who have come on the scene more recently.  
17 And certainly to each of the creditor constituencies in the  
18 case, you know, regular calls and discussions keeping them  
19 fully informed.

20 Mr. Friedman and I, together with my client, Mr.  
21 Rosenfeld, have been having in-person meetings with a, with a  
22 great number of interested parties in this process. And I  
23 think that there is progress being made, but I'm not here  
24 today, unfortunately, to tell you we have a, a final result  
25 to present yet, and I am, instead, here to ask you for some

1 more time. And --

2 THE COURT: Well, we have no option with that, so  
3 we're going to have to take some time. But I don't think the  
4 -- and I said this last -- or maybe I said it in chambers,  
5 but I said it to somebody, there was nothing that was going  
6 to change between two weeks ago and today. That I knew. And  
7 nothing's going to change between today and a month from now.

8 Until there are conversations with the town of  
9 Brookhaven by an interested party, as to what that party  
10 wants to do with that land, and what changes of zoning or  
11 otherwise, is necessary, and Brookhaven's response to that,  
12 you're not getting an offer of any consequence in my opinion.

13 MR. SOUTHARD: We -- Your Honor, we, we certainly  
14 appreciate that vantage point, and in many respects I, I  
15 don't disagree. To that end, part of the many discussions  
16 that I referenced a few moments ago, generically, did include  
17 discussions with various parties from the town of Brookhaven,  
18 representatives.

19 THE COURT: Now, the, the potential buyers, I don't  
20 need the specifics, but potential buyers, are looking to do  
21 different things, or they're all kind of looking to do the  
22 same thing?

23 MR. SOUTHARD: There, there is a, a range of, of  
24 different interests that the potential purchasers would look  
25 to do with the property. There's certainly some commonality

1 in terms of the highest value uses. And, you know, we are  
2 trying to put together as many pieces of value that can work  
3 together in a collaborative --

4 THE COURT: What is it zoned for now?

5 MR. SOUTHARD: It's zoned as A1 Residential, which  
6 permits just a single family residential one acre lot.

7 THE COURT: I don't assume there are a lot of  
8 people clamoring to do that there, are there?

9 MR. SOUTHARD: You're correct, Your Honor. There  
10 are not a lot of people clamoring to do --

11 THE COURT: Right.

12 MR. SOUTHARD: -- that.

13 THE COURT: So you've got -- you know, the only  
14 options are multifamily at a certain price point if somebody  
15 wants to build that, which is then a price per unit to value  
16 the land. It's a combination commercial. I don't see many  
17 50 story office towers going on out there.

18 MR. SOUTHARD: And as much as it's next to the  
19 airport --

20 THE COURT: And a warehouse --

21 MR. SOUTHARD: -- you know --

22 THE COURT: -- distribution center.

23 MR. SOUTHARD: Oh, I'm sorry?

24 THE COURT: And a warehouse distribution center.  
25 How many options do they have out there?

1 MAN 1: There's a few options.

2 MR. SOUTHARD: There -- Your Honor, there, there  
3 are actually, surprisingly quite a few options that are, that  
4 are being considered. Certainly, Your Honor raised  
5 multifamily, and that's one of the areas that is in the more  
6 sort of concentrated interests and higher value. And that is  
7 part of a big discussion that has taken place with, with the  
8 various interested parties.

9 So, you know, I think we need to see more of that  
10 process play out and blossom over the next, say, three weeks  
11 or so before we're ready for another status report to Your  
12 Honor. It is very possible because, you know, one of the  
13 bidder groups who is actually in the courtroom today, is, is  
14 changing their bid in, in an improved fashion, or we believe  
15 so, that, that we could have something develop that, that we  
16 could present to Your Honor.

17 But as we -- you know, as we play out this process,  
18 there, there's a lot that goes on behind the scenes that's  
19 not necessarily something we can put on the record before  
20 (indiscernible).

21 THE COURT: No. And that's why I'm not asking. I,  
22 I know how the -- I used to know how the process works.

23 The creditors, the secured creditors, won't be paid  
24 in full if this thing sells at 10 million. I assume the  
25 issue is, are they -- do they want to ride this out, improve

1 the value, and try to maximize their return, or do they want  
2 to leave today.

3 MR. SOUTHARD: That is certainly a dynamic that is  
4 at play. And we are, we are attempting to see what kind of  
5 increased value we can put together in the relative short-  
6 term. And then I think it's likely that the options  
7 available at that point will be put on the table and decision  
8 will be made.

9 And it could be that there's an interest in the  
10 longer term play for the greater potential yield. But  
11 there's also the, the real possibility that decisions will be  
12 made to, in essence, take what's available now and, and  
13 complete the case.

14 THE COURT: Anybody got anything?

15 The court meets silence.

16 MAN 2: Nothing really to add other than to echo  
17 Mr. Southard's (indiscernible), Your Honor. It's been a  
18 fairly tense effort over the last few weeks with all parties.  
19 As Southard said, (indiscernible) in-person meetings and  
20 telephone calls so that we can walk further down the fields.  
21 Your Honor has certainly hit upon many of the issues.  
22 There's a host of others.

23 But for a status conference today, I think we've  
24 covered them all. I think within three weeks we'll  
25 definitely know more now -- more then than we know now

1 because the process is in motion. Whether it will be done is  
2 a good question. I think that's a function of how some of  
3 the parties react to the information, but certainly the point  
4 that you raised about the rezoning application and  
5 possibilities is at the forefront of everybody's mind, and  
6 has been a topic of a weekly in-person meeting with the  
7 requisite parties to advance that (indiscernible) as fast as  
8 we can.

9 THE COURT: That's all we got.

10 You guys are investigating any adversaries that you  
11 may be bringing?

12 MAN 2: We are fully evaluating and pursuing those.  
13 There's a extensive draft already in my office to sue those  
14 third party claims, and discovery is underway based on some  
15 of the 2004s that Your Honor had entered earlier in the case,  
16 and some essential discovery, which has been proffered at the  
17 request of my office to serve third party -- serve third  
18 parties.

19 And it's, it's a pretty full process already, Your  
20 Honor, so no hesitation there.

21 THE COURT: All right. We'll put it out a month.

22 I have been saying for a while now, that before we  
23 get through this sale, and closing, my guess is you're going  
24 to be asking me to do some things, either consistent with the  
25 town of Brookhaven, or not, which isn't unusual. I mean, it

1 happens.

2                   And what we normally find in these cases is --  
3 maybe you guys know, is town, towns are focused on two or  
4 three things. One of them, are the voters upset about what  
5 you're going to do there. This is basically a  
6 (indiscernible) expressway -- on the expressway. And two,  
7 what's it do to the town's tax base. They don't like  
8 building tax exempt projects.

9                   You have infrastructure and all kinds of other  
10 issues that they face. And these issues come up in any -- I  
11 mean, this thing's only out in the east end of  
12 (indiscernible). It's in the east end of (indiscernible).  
13 Oh, yeah. And so people aren't paying attention to it. But  
14 we've been through these cases in the middle of New York to  
15 other places, and it's the same issues.

16                  It's, I can't tell you what I want to pay until I  
17 can tell you on a unit basis what I can earn. If it's an  
18 office building, what will rents bring? If it's houses,  
19 what'll they sell for? That's the only factor, because they  
20 all have to borrow from banks, and that's what the banks  
21 want. So you've got the maximum leverage that the town has  
22 before you sell it, because they're basically controlling  
23 what people are willing to pay, in a sense.

24                  You're going to have to get over it. Somehow we  
25 got to jump over that hurdle, and that's a hard thing. I

1 accept it's a hard thing to do. And I appreciate that you  
2 want to have as few confrontational proceedings, especially  
3 with political organization, as possible. But sometimes it's  
4 all you can do.

5 MR. SOUTHARD: Understood, Your Honor. We, we do  
6 desire to avoid unnecessary confrontation.

7 THE COURT: I agree with you. It's hard to beat a  
8 municipality. And whatever it is, it takes a long time. And  
9 they know what they want half the time. And I don't blame  
10 them. That's their job. You have one, you have one, they  
11 have one.

12 But somehow we got to get this teed up so that  
13 either we can't get to where you want to get to and not run  
14 up enormous additional administrative fees to prove that, or  
15 we can. Or if somebody wants to buy your position and then  
16 fight the town with -- I mean, and there's a million  
17 different --

18 MAN 3: (Indiscernible.)

19 THE COURT: -- ways to do it.

20 MR. SOUTHARD: Agree.

21 THE COURT: But I agree at this point, you got to  
22 work as consensually as you can. And this is, it's a big --  
23 it's 110 acres in the town, so it's a big deal for them. And  
24 I respect that. They, they got to do what they do for their  
25 constituents.

1           All right, put it out.

2           THE CLERK: March 26th at 1:30.

3           THE COURT: Are any of these brokers we retained  
4           doing anything, or do they just want to collect commissions  
5           at the end?

6           MR. SOUTHARD: They, they continue to be involved,  
7           Your Honor, but we -- Mr. Friedman and myself and Mr.  
8           Rosenfeld --

9           THE COURT: We got to think about this, because I  
10          don't -- it's going to come to a huge shock to somebody at  
11          the end of this process where I have to -- for fees -- I've  
12          always taken the position that if you don't deserve to get  
13          it, I'm not giving it to you just for the heck of it. And  
14          they should know that.

15          I don't want to, I don't want to cheat them out of  
16          anything. They have commission agreements. But they have to  
17          understand why the Court retains them, and they're under the  
18          same parameters as every other professional who works here.  
19          You can't sign an agreement, walk away, come back at the end,  
20          and say, I'm here.

21          MR. SOUTHARD: Understood.

22          THE COURT: It'll be a lonely day. So let's take  
23          care of that.

24          Okay. Give them a date.

25          THE CLERK: March 26th at 1:30.

1 MR. SOUTHARD: Thank you.

2 THE COURT: Thanks, guys.

3 UNISON: Thank you, Your Honor.

4 (Whereupon these proceedings were concluded at 2:01 PM)

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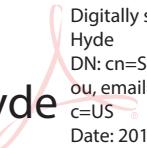
Page 23

1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing  
4 transcript is a true and accurate record of the proceedings.

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6   
7 Sonya  
Ledanski Hyde

Digital signature by Sonya Ledanski  
Hyde  
DN: cn=Sonya Ledanski Hyde, o,  
ou, email=digital1@veritext.com,  
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Date: 2018.04.04 16:23:52 -04'00'

8 Sonya Ledanski Hyde

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19

20 Veritext Legal Solutions

21 330 Old Country Road

22 Suite 300

23 Mineola, NY 11501

24

25 Date: April 4, 2018

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